

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**RONNDA JONES,
also known as RHONDA LAW,**

Plaintiff,

v.

No. 12-cv-1006 MCA/SMV

**BOARD OF COUNTY COMMISSIONERS OF
CURRY COUNTY,**

Defendant.

ORDER

THIS MATTER is before the Court on Defendant's Motion to Compel [Doc. 24], filed February 8, 2013; its Addendum [Doc. 26], filed on March 18, 2013; and on the Order to Show Cause [Doc. 27] ("OTSC"), issued on April 5, 2013. Plaintiff responded to the OTSC on April 19, 2013. [Doc. 30]. The Court has reviewed the filings related to these matters [Docs. 24, 25, 26, 27, 28, 29, 30, 31], and being fully advised in the premises, will DENY the Motion to Compel as moot, quash the OTSC, and extend the discovery deadlines by three months.

In the original Motion to Compel [Doc. 24], Defendant sought an order compelling Plaintiff to provide answers to its First Set of Interrogatories and Requests for Production, served on November 13, 2012. [Doc. 24] at 2. Plaintiff did not respond to the motion but did file a certificate of service indicating that she had responded to the discovery requests on March 7, 2013. [Doc. 25]. By March 13, 2013, however, the original motion was still pending. The Court directed its staff to ask Defendant to take action on the pending motion, by either withdrawing it or amending it to reflect any still outstanding dispute. Defendant filed its

addendum on March 18, 2013, indicating that a dispute remained as to Interrogatory No. 13 and authorizations to release medical records for certain providers. [Doc. 26]. By April 5, 2013, Plaintiff had filed no response to the addendum, and the Court ordered her to show cause why the requests in the addendum should not be granted under D.N.M.LR-Civ. 7.1(b) and why she should not be ordered to pay Defendant's reasonable expenses including attorney fees, incurred in filing the motion and addendum under Fed. R. Civ. P. 37(a)(5)(A). [Doc. 27].

Plaintiff timely responded to the OTSC on April 19, 2013. [Docs. 28, 29, 30]. She reported that she had responded to all of Defendant's discovery requests, and none remained outstanding. [Doc. 30] at 3. Her counsel also admitted that he "inadvertently overlooked" the discovery requests and indicated that he corrected the mistake "as soon as it was realized," *Id.* at 2. Furthermore, he apologized. *Id.* at 4. Ultimately Plaintiff argued that the motion should be denied as moot. *Id.* at 3. She further argued that reasonable expenses and fees should not be imposed because she thought the Motion to Compel was moot when she filed her certificate of service on March 13, 2013; defense counsel did not confer prior to filing the addendum; Defendant did not request fees; Plaintiff is on disability and unable to pay; and that her delays did not harm Defendant. *Id.* at 2–4. Defendant replied that, although no discovery remained outstanding, it had been harmed by the more-than-four-month delay because so much of the discovery period had been frittered away. [Doc. 31] at 1. However, Defendant indicated that "this can be cured through an amended scheduling order, which may be sanction enough." *Id.*

Considering all of the circumstances, the Court finds that an award of expenses would be unjust. *See* Fed. R. Civ. P. 37(a)(5)(A)(iii). An extension of the discovery deadlines would be

more appropriate. However, Plaintiff's counsel is reminded of his professional duty to "act with reasonable diligence and promptness[.]" Rule 16-103 NMRA (New Mexico Rules of Professional Conduct). In particular, his "workload must be controlled so that each matter can be handled competently." *Id.* at cmt. ¶ 2.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Defendant's Motion to Compel [Doc. 24] and the requests contained in the Addendum [Doc. 26] are **DENIED as moot.**

IT IS FURTHER ORDERED that the Order to Show Cause [Doc. 27] is **QUASHED.**

IT IS FURTHER ORDERED that Scheduling Order [Doc. 21] is **AMENDED** as follows:

Termination of discovery	October 1, 2013
Deadline to file discovery motions	October 21, 2013
Deadline to file pretrial motions	October 31, 2013
Pretrial Order (Plaintiff to Defendant)	December 16, 2013
Pretrial Order (Defendant to Court)	December 30, 2013

Any deadline not expressly amended herein remains in effect.

IT IS SO ORDERED.



STEPHAN M. VIDMAR
United States Magistrate Judge